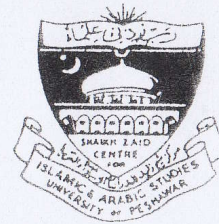


RJC: September, 2002

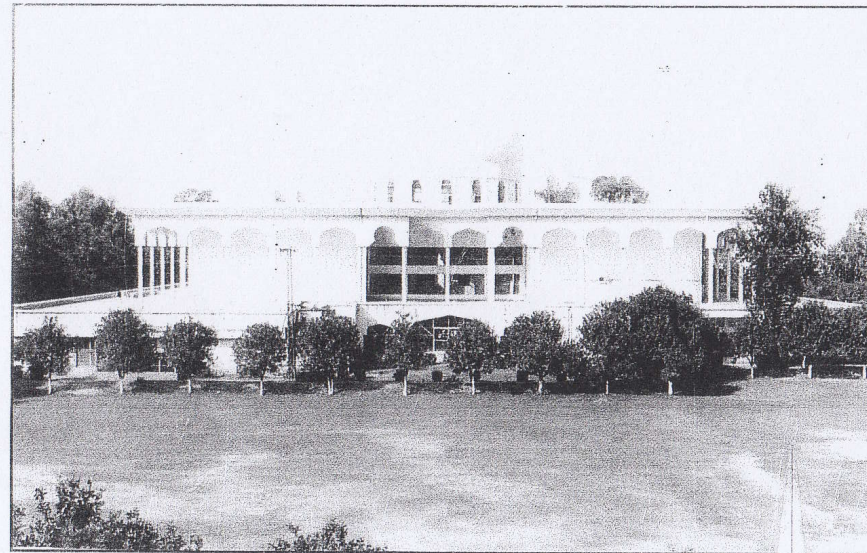
RESEARCH JOURNAL

ENGLISH SECTION

Vol. 1



No. 3



EDITOR: DR. SHAZIA BABAR

Shaykh Zayed Islamic Centre
University of Peshawar
Pakistan

Honour Killing in the Islamic Perspective

In Pakistani society honour killing is an issue, which needs great attention. Pakistan Penal Code recognizes *ghayrah* or sudden provocation and gives benefit to the person who acts under its influence. This provision is usually misused criminally and some time targeting innocent people, particularly women who are killed in the name of dignity / prestige or pride. With this context the issue of *ghayrah* needs to be reevaluated as per the requirements of the Islamic injunctions. The following discussion is focused on the provision of *ghayrah* (honour killing) in the Islamic law.

In Arabic language the term *ghayrah* amounts to temperament or zeal. *Ghayrah* occurs when the pride or prestige of someone is affected and he feels shame as a result of trespass injuring his dignity. This provokes the person into sudden anger, which consequently changes his normal behaviour.

”الغيرة في الأصل الحمية والأنفة وهو تفسير بلازم التغير فيرجع إلى

الغضب.” (1)

Ghayrah basically means zeal and pride turning towards anger or irritation when affected.

”هي مشتقة من تغير القلب وهيجان الغضب بسبب المشاركة فيما به الاختصاص وأشد ما يكون ذلك بين الزوجين.” (2)

It is derived from the change of mind (Taghayur al-Qalb) and commotion of anger (Hayjan al-Ghadhab) on the basis of shared (emotional) rights, which are specific. This (emotion) is (perhaps) excessive between the spouses.

The author of *Abjad al-'Uloom* defines it as under:

Gayrah means - كراهة شركة الغير في حقه - disliking of trespass into his right.³

In fact Islamic law provides protection to the life, property, dignity and prestige of the members of its society. In this regard the Prophet (peace be upon him) said:

كل المسلم على المسلم حرام دمه وماله وعرضه. (4)

The life, property and dignity of a Muslim are sacrosanct for another Muslim.

The Prophet (peace be upon him) also pointed out the importance of three basic rights of a person, he said:

فإن دماءكم وأموالكم وأعراضكم حرام إلى أن تلقوا ربكم كحرمة يومكم هذا. (5)

Undoubtedly your lives, properties and prestige are sacred (prohibited) like this day [the last day of the last pilgrimage

of the Prophet (peace be upon him)] till the Day of Judgment (to meet Almighty Allah).

The author of *Fiqh al-Sunnah* says:

الجنائية في عرف الشرع: كل فعل المحرم والفعل المحرم كل فعل خطره
الشارع ومنع منه لئلا يضر واقع على الدين أو النفس أو العقل
أو العرض أو المال. (6)

In Shari'ah crime means, committing that which is declared by the lawgiver as dangerous ordering abstention from it, because of its being harmful or injurious to Din, life, intellect, dignity or property.

The *Qur'an* says:

قل إنما حرم ربي الفواحش ما ظهر منها وما بطن والإثم والبغي بغير الحق. (7)

Say: My Lord has forbidden indecencies, such of them as are apparent and such as are hidden and sin and wrongful oppression.

The verdict of Almighty Allah in connection with these indecencies is final and binding and any sort of misinterpretation in this regard would cause great damage to the objectives of law.

The *Qur'an* says:

فاصبر لحكم ربك ولا تطع منهم آثماً أو كفوراً. (8)

So submit patiently to thy Lord's command, and obey not of them any guilty one or disbeliever.

All types of indecencies and violations of these basic rights amount to crime and committing adultery or fornication with the wife or near relative (prohibited degrees) of someone is not merely one crime, but multiple crime in its nature, i.e. the crime of: (1) Adultery / fornication; (2) Trespass; (3) Attempt to disgrace the person and his family; (4) Violating of the basic human rights; (5) Putting into shame the husband, near relative or family of the woman.

The violation of three basic rights, i.e. life, property, and dignity or prestige are punishable under the Islamic law and other societies all over the world. In Islamic law these punishments are severe and deterrent. That detergency reflects the precautionary measure taken by Islam for the protection of the basic rights of each and every individual of society.

The above-mentioned basic human rights are the most important ones in society. The whole structure of society is based on it and violation in this regard can create numerous problems in any civilized society. The Islamic society imposes certain limitations in this connection and makes it the duty of a Muslim not to provide any opportunity for any unlawful activity. Thus

elimination of *Munkar* (disapproved act) and spreading of *Ma'ruf* (recognized or approved act) is the basic and undisputed duty of a Muslim. *Shari'ah* not only protects the life of an innocent person but also his/her property, family, religion, and dignity or prestige. Violation of these rights is not only sinful but a crime against humanity. Any sort of unavoidable act for the protection of these rights is liable to nothing. The person concerned has the right and in some cases the obligation under the Islamic law, to do what is necessary, to protect his Din, life, intellect, dignity or property.

The *Qur'an* says:

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ (9)

You are the best community that has been raised up for mankind. You enjoin right conduct and forbid the disapproved (action) and you believe in Allah.

The Prophet (peace be upon him) has also laid down the extent of the action to be taken by the believers, in case any disapproved action is being performed. He said:

مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ وَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ (10)

Whoso witnesses a disapproved act, has the duty to stop it by force, if he cannot do that, then he must express his dislike verbally and if he cannot do this, then he should dislike it from the core of his heart which is the lowest degree of believing (in Allah).

In the light of these explicit verdicts, the question arises whether *Qatl-e-'Amad* is liable to *Qisas* if the offender while deprived of the power of self control by grave and sudden provocation or *ghayrah* causes the death of the person who gives the provocation. It means that when an offender kills someone under sudden provocation or *ghayrah* in a situation when the crime of adultery or fornication is being committed in particular with his wife or any other near relation.

In Islamic law the *Hadith* of Sa'ad b. 'Ubadah provides a brief idea with solid grounds and hope for the solution of such a sensitive problem.

”قال سعد بن عبادة لو رأيت رجلا مع امرأتي لضربته بالسيف غير مصفح فبلغ ذلك إلى رسول الله صلى الله عليه وسلم قال أتعجبون من غيرة سعد والله أغير منه ومن أجل غيرة الله حرم الفواحش ما ظهر منها وما بطن.“ (11)

Sa'ad ibn 'Ubadah said, "if I saw a man with my wife, I would strike him (behead him) with the blade of my sword." This news (statement of Sa'ad) reached the Prophet (peace

be upon him), who then said, "You people are astonished at Sa'ad's Chaira. By Allah, I have more ghayrah than he, and Allah has more ghayrah than I, and because of Allah's ghayrah. He has made unlawful shameful deeds and sins (illegal sexual intercourse etc.) done in open and in secret."

The precedent of 'Umar (Allah may pleased with him) the second Caliph, provides approval to the murder of the offender of adultery on the spot of the occurrence.

It is narrated of 'Umar that one day while he was at lunch a man with a sword full of blood in his hand came and sat in front of him while some people were following him angrily. They told 'Umar, that he had killed his wife along with their companion. 'Umar asked that person, if he was listening to what they were saying. He replied that he struck with his sword the legs of his wife and if there was someone else then he might have been killed as well. 'Umar then asked for their version. They replied that he struck with his sword cutting the legs of his wife and the waist of their companion, which resulted in the death of his wife and their companion. 'Umar declared that, (to the accused) if they offended again, he should also do the same.¹²

The author of *Kitab al-Ikhtiyar* says:

رجل رأى رجلاً يزني بامرأته أو بامرأة رجل آخر وهو محصن فصاح به فلم يهرب ولم يمتنع عن الزنا حل لهذا قتله لأقصاص عليه.⁽¹³⁾

If a person witnessed a married person (Muhsin) committing adultery with his (witness's) wife or the wife of any other man and asked him to abstain from it but he did not, the killing of such a person is justified and does not amount to Qisas.

Imam Ibn Taymiyyah says:

إن كان قد وجد هما يفعلان الفاحشة وقتلها فلا شئ في الباطن في أظهر قول العلماء.⁽¹⁴⁾

He further says:

ومن العلماء من قال يسقط القود عنه إذا كان الزاني محصناً سواء كان القاتل هو زوج المرأة أو غيره.⁽¹⁵⁾

Some of the Muslim scholars have said that there is no retaliation for the killing of married adulterers (Muhsin), no matter if the killer was the husband of the woman or someone else.

The renowned Shafi'e scholar Imam Shirazi says:

وإن وجد رجلاً يزني بامرأته ولم يمكنه المنع إلا بالقتل فقتله لم يجب عليه شئ فيما بينه وبين الله عز وجل لأنه قتله بحق فان ادعى أنه قتله لذلك وأنكر الولي ولم يكن بينة لم يقبل قوله فإذا حلف الولي حكم عليه بالقود.⁽¹⁶⁾

If (he) witnessed someone committing adultery with his (witness's) wife and it was impossible to restrain him

*without killing him and (ultimately) killed him, he is liable to nothing before Almighty Allah, because he killed him rightly. If he declared that he killed him because of the said offence and has no proof and the guardian (of the person) denied then his statement would not be accepted. If the guardian (of the person) took oath in support of his denial, orders of retaliation would be made.*¹⁷

روي سعيد بن المسيب قال أرسل معاوية أبا موسى إلى علي كرم الله وجهه سأل عن رجل وجد على امرأته رجلا فقتله فقال علي كرم الله وجهه لتخبرني لم تسأل عن هذا فقال إن معاوية كتب إلي فقال علي أنا أبو الحسن إن جاء بأربعة شهداء يشهدون على الزنا وإلا أعطى برمته يقول يقتل.⁽¹⁸⁾

Sa'eed b. al-Musayyib narrates that Muawiyah sent Abu Musa to 'Ali (the fourth Caliph) asking about a person who upon witnessing another person committing adultery with his wife and killed him. 'Ali asked him (Abu Musa) to tell him why he was asking him about that. He replied that Mu'awiyah had written to him about that. 'Ali said, "I am Abu al-Hassan. Until and unless he produces four witnesses of the commission of adultery, he would be given to the guardians of the deceased for retaliation."

Shah Wali Allah says:

ولو اطلع في بيتك أحد ولم تأذن له فخذنته بحصات ففقات عينه ما كان عليك من جناح.⁽¹⁹⁾

You are liable for nothing if someone peeps in to your house without your permission and you throw a stone towards him bursting his eye.

The author of 'Ain al-Hidayah says:

قال القصاص واجب بقتل كل محقوق الدم على التأييد إذا قتل عمدا.⁽²⁰⁾

Retaliation is due for the murder of every legally protected or worthy (person) forever.

Imam Muhammad narrates from Ibrahim Nakh'i, if a person entered someone's house in the night and was found killed in the morning, the owner of the house made a statement that he (the intruder) showed obstinacy and confronted him, it will be thus examined, if the deceased was known as a thief, then there is no retaliation (*Qisas*) and the owner of the house will pay the blood money, if he was not known as a thief and was known as pious, then the owner of the house is liable for retaliation. If the offender (the owner of the house) made a statement that he found that person on the belly of his wife and therefore killed him, so it will be examined whether he (the deceased) was known as an adulterer, if so, then there is no retaliation (*Qisas*) and the owner of the house will pay the blood money, if he was known as pious then the owner of the house will be liable for retaliation (*Qisas*). In fact if he entered there for adultery or theft, then his murder is liable for nothing.²¹

If someone witnessed a person committing adultery or fornication with the woman of his prohibited degrees (*Muharramat*) with her consent and he killed both of them, it is not sinful and liable for nothing. If the claim of the house owner is without proof, the verdict will be according to the opinion of Ibrahim Nakh'i (as quoted above). If he intended theft and obstinate then the murderer is not liable for blood money. According to Imam Muhammad he is liable for nothing.²²

The following narration from Abu Hurayrah (RA) is slightly different from the preceding *Hadith* of Sa'ad b. 'Ubaddah. أن سعد بن عبادة قال يا رسول الله أرأيت لو وجدت مع امرأتي رجلاً أأمله حتى آتي بأربعة شهداء قال نعم. (23) فدل على أنه لا يقبل قوله من غير بينة. (24)

Sa'ad b. 'Ubaddah asked the Prophet (peace be upon him) if he saw someone with his wife (while committing adultery), should he wait to bring four witnesses, the Prophet (peace be upon him) replied, "Yes". (The commentator says) it proves that his statement will not be accepted without proof.

The following *Hadith* has the same subject in *Sunnan Ibn Majah*. The last words of that *Hadith* are different and are as under:

فذكر ذلك للنبي صلى الله عليه وسلم فقال كفى بالسيف شاهد اثم قال: لا إني أذاف أن يتتابع في ذلك السكران والغيران. (25)

Then this was told to the Prophet (peace be upon him), thus he said, "The sword is sufficient as proof", then again he said, "No! I feel worried, the intoxicated and neighbours or irrelevant people will start indulging in it."

The last part of the *Hadith* mentioned above shows the extreme caution showed by the Prophet (peace be upon him) in this respect. His reaction denotes the requirements of the public good. In the present circumstances such measures can be taken, that the law is not allowed to be misused and exploited by the criminals. It is evident that the affected person has the right to protect his life, property and dignity but the public good requires not to act without proof. On the one hand it will protect the life of an innocent person if compelled, and on the other the criminals would be unable to exploit the law.

In this connection the *Qur'an* says:

من قتل نفسا بغير نفس أو فساد في الأرض فكأنما قتل الناس جميعا. (26)

Whoso killed a human being for other than manslaughter or corruption on the earth, it shall be as if he had killed all mankind.

Abdul Majid Darya Abdi in his commentary has elaborated *Fasad* as under:

Fasad means, "A murder which has been carried out as a consequence of action that would have created law and order problem" in society namely; robbery, apostasy and adultery."²⁷

According to the *Qur'anic* injunctions the murder of an individual is a crime against humanity but in case of corruption and retaliation it is not so. It is evident that corruption or immorality causes great harm to society and therefore provides basis for killing each other. Thus killing on the ground of an immoral act does not amount to retaliation.

The *Qur'an* further says:

والذين لا يدعون مع الله إلهاً آخر ولا يقتلون النفس التي حرم الله إلا بالحق ولا يزنون ومن يفعل ذلك يلق أثاماً. (28)

And those who hold not unto any other god along with Allah, nor take the life, which Allah has forbidden, except in (course of) justice, nor commit adultery (are true Muslims) and all those acts contrary shall pay the penalty.

Islam not only condemns indecencies but also provides the opportunity to remove them from their roots. The following *Hadith* elaborates the *Qur'anic* text.

اجتنبوا السبع الموبقات..... قتل النفس التي حرم الله إلا بالحق. (29)

Avoid seven destructive things ... Killing of the worthy person except rightfully.

According to the Islamic injunctions the life and pride of the people are equally important. Any person, whose dignity is at risk, has the right to react. Islamic law allows him the right to protect his life, property and prestige, just as in the case of a woman, if compelled for adultery or fornication and her reaction results in the murder of the person concerned, she will not be liable to any penalty. Islam recognizes the justified feelings of the people and allows them to protect their rights. Those who act in protection of their rights are not criminals.

As the *Qur'an* says:

إن للمتقين عند ربهم جنت النعيم أفجعل المسلمين كالمجرمين مالم كيف تحكمون أم لكم كتب فيه تدرسون. (30)

"Lo! For those who keep from evil have gardens of bliss with their Lord in reserve. Shall We then treat those who have surrendered (to Islam) as We treat the guilty. What aileth you? How foolishly you judge! Or have you Scripture wherein you learn.

In the light of above discussion it is concluded as under:

1. According to Islamic injunctions the lives, properties and prestige of the people are equally important and sacred.
2. Islamic society does not allow any one to violate the basic rights of its members in the society.
3. The murder of a person while committing adultery or fornication with nearest relation (wife or other persons of prohibited degrees) of the murderer is justified under Islamic law conditionally.
4. Each and every person has the right to protect his dignity / honour and all legitimate actions in this respect are permitted but he must be held responsible until and unless he provides the proof of the occurrence of the adultery or fornication. Mere statement in this regard is not acceptable in the court of law.
5. If public good requires any attempt to control the unlawful use of the above provision, appropriate measure could be taken in this respect to control the misuse of the law in the public interest.
6. The dignity / prestige of the people is as important as the lives of the people. The government and the

law enforcing agencies are responsible to take necessary steps to ensure that lives and prides of all its members are safe.

7. The state has the authority to introduce any new law or amendment (as per the objectives of the *Shari'ah*) under the provision of Sad al-Dharie' or public good to control the misuse of such a lawful provision.

End Notes:

1. 'Asqalani, Ibn Hajar, *Fath al-Bari, Sharh Sahih Bukhari*, 9:320, *Dar Nashr al-Kutub al-Islamiya*, Lahore, 1401/1981.
2. 'Asqalani, *Fath al-Bari*, 9:320.
3. Ahmad Nagri, 'Abd al-Nabi b. 'Abd Al-Rasul, *Jami 'al-Uloom fi Istilahat al-Funoon*, (Dastoor al-'Ulama), 3:10, *Muasisat al-A'lami*, Beirut, 1395/ 1975.
4. Muslim b. al-Hajjaj al-Qushayri, Abu al-Hasan, *Sahih, Bab al-Tathabut fil Hadith wa Hum Kitabat al-Ilm*, 1:8, N.D.
5. Ibn Hisham, *Seerat al-Nabawiyyah*, 4:25, *Dar Ahya al-Taurath al-Arabi*, Beirut, N.D. Bukhari, Muhammad b. Ismail, *Sahih, Kitab al-Adab*, 2/893, Noor Muhammad, *Markhana Tijarat-Kutub*, Karachi 2nd edition, 1381/1961.

6. Sayyed al-Sabiq, *Fiqh al-Sunnah*, 2:506, 5th edition, 1391/1971.
7. *Al-Qur'an*: 7:33.
8. *Al-Qur'an*: 76:24.
9. *Al-Qur'an*: 3:110.
10. Nisai, Ahmad b. Shu'ayb, 'Abu 'Abd al-Rahman, *Sunnan*, 2:256, *Maktabah Salfiyah* 1st edition, Lahore, 1376/1956.
11. Bukhari, Muhammad b. Ismail, *Sahih*, 2:1103, *Maktabah al-Athariyyah*, Beirut, 1997/1417.
12. Al-Haskafi, 'Ala al-Din, Muhammad, *al-Dur al-Mukhtar fi Sharh Tanweer al-Absar*, 5:371, *Dar Ahya al-Turath al-Arabi*, 1st edition, Beirut, 1419/1998.
13. 'Asqalani, *Fath al-Bari*, 12:142, Al-Ikhtiyar, 219.
14. Ibn Taymiyyah, Ahmad b. Abd al-Rahim, *Majmu Fatawa*, 34:168, al-Mumlikat al-Arabia al-Saudia al-Riad, N.D.
15. Ibn Taymiyyah, *Majmu Fatawa*, 34:169.
16. Al-Shirazi, Ibrahim b. 'Ali, Abu Ishaq, *al-Muhadhab*, 2:225, Cairo, N.D.
17. Abdul Qadir Audah, *al-Tashri al-Janai al-Islami Maqarana bil Qanoon al-Wasfi*, 2:20, Dar al-Qutub al-Arabi, Beirut.
18. Al-Shirazi, *al-Muhadhab*, 2:225.
19. Wali Allah, Shah, *Hujat Allah al-Balighah*, (Urdu) p.525, Dar al-Isha'at, Karachi, N.D.
20. Amir Ali, Syed, *'Ain al-Hidayah*, (Urdu) 4:554, Pakistan Educational Press, Lahore, Pakistan. N.D.
21. Amir Ali, Syed, *'Ain al-Hidayah*, 4:573.
22. Amir Ali, Syed, *'Ain al-Hidayah*, 4:573.
23. Hanbal, Ahmad b., *Musnad*, 3:229, *Dar Ahya al-Turath al-Arabi*, Beirut, N.D.
24. Al-Shirazi, *al-Muhadhab*, 2:225.
25. Ibn Majah, Muhammad b. Yazid, Abu Abd Allah, *Sunnan*, *Hadith* No. 2606, Dar al-Fikr, Beirut.
26. *Al-Qur'an*: 5:32.
27. Darya Abadi, 'Abd al-Majid, *al-Qur'an al-Hakim ma 'a Tarjuma wa Tafseer*, (Urdu), p.249, Taj Company, Lahore / Karachi.
28. *Al-Qur'an*: 25:68.
29. Bukhari, Muhammad b. Ismail, *Sahih*, (*Kitab al-Wasaya*), 1/388, Noor Muhammad, Karachi, 2nd edition, 1381/ 1961.
30. *Al-Qur'an*: 68:24-27.